



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office

October 8, 2015

1:30 p.m.

Present: Linda Hamilton Krieger, Raymund Liongson, Kim Coco Iwamoto, and Wally Fukunaga, Commissioners; Livia Wang, Bill Hoshijo, Marcus Kawatachi, and Sharon Ferguson-Quick, Staff; Francine Wai, DCAB Executive Director, Guest.

Commissioner Artemio Baxa, excused.

In Chair Linda Hamilton Krieger's absence, Commissioner Raymund Liongson served as acting chair and called the meeting to order.

Approval of Minutes

The minutes of the August 13, 2015, meeting were approved, with a correction on page 5, to more accurately reflect Commissioner Kim Coco Iwamoto's comments, suggesting that institutionalized discrimination by government agencies can have a negative disparate impact on minority populations that civil rights laws should protect. (m/s/p Fukunaga/Iwamoto; all).

Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi introduced new HCRC Program Specialist - Mediation Coordinator Sharon Ferguson-Quick.

DED Kawatachi presented a FY 2016 HCRC Mediation Program year to date report.

Summary & Details (7/1/15 through 10/18/15)

Referrals:	16
Dispositions:	16
Settlements:	7
Non-agreements:	9
Settlement Rate:	43.8 %
Employment cases settled:	7
Non-employment cases settled:	0
Dual-filed (EEOC/HCRC) settlements:	2
State-only settlements:	2

Primary Bases for Complaints Settled in Mediation

Sex	2 (2 pregnancy)
Disability	2
Arrest & Court Record	2
Race	1

Dispositions by Mediation Center

Mediation Center of the Pacific	6/9	(settlement rate 66.7 %)
Ku'ikahi Mediation Services (Hilo)	0/3	(settlement rate 0 %)
Private Mediators	1/2	(settlement rate 50 %)
Kauai Economic Opportunity, Inc.	0/1	(settlement rate 0%)
Mediation Services of Maui	0/1	(settlement rate 0%)
West Hawaii Mediation Center	0/0	
OVERALL	7/16	(settlement rate 43.8%)

Chair Krieger arrived and chaired the meeting from this point.

DED Kawatachi presented a data and production report showing caseload data through October 18, 2015.

As of October 18, 2015, the report showed 367 382 open cases, a decrease of 15 cases from the number reported as of August 13, 2015. Of those, 0 (0%) were filed in 2009, 1 (0.3%) filed in 2010, 6 (1.6%) filed in 2011, 15 (4.1%) in 2012, 44 (12.0%) in 2013, 84 (22.9%) in 2014, and 217 (59.1%) in 2015.

The report also showed a breakdown of the status of the open cases by investigation stage.

	2009	2010	2011	2012	2013	2014	2015	Total
Housing Cases	0	0	0	1	0	3	14	18
Intake Stage	0	0	0	0	13	51	145	209
Mediation	0	0	0	2	3	9	30	44
Pending Assignment	0	0	0	0	0	1	7	8
Active Investigation	0	1	10	12	9	12	13	57
TOTAL	0	1	6	15	44	84	217	367

DED Kawatachi noted that the data reflected concerted effort to address and reduce the number of oldest cases and cases pending assignment.

The report indicated that no subpoena enforcement actions had been filed. DED Kawatachi noted that there were several pending investigation cases that would be assigned to an attorney for subpoena enforcement.

Chief Counsel's Report

CC Wang reported on the status of the *Bate* appeal from a Commission final decision. A case management order from the Circuit Court was pending, and the parties planned to apply for leave to file

an interlocutory appeal from that order.

CC Wang also reported on the status of the *Elento* Circuit Court appeal. The HCRC filed an appeal to the Intermediate Court of Appeals, and was considering whether to request a transfer of the case to the Supreme Court. The HCRC's opening brief was due October 29, 2015.

Old Business

Executive Director (ED) Bill Hoshijo said there was nothing new to report on *Cervelli v. Aloha Bed & Breakfast*, which remained pending before the Intermediate Court of Appeals.

On the issue of discriminatory exclusions in health plan coverage, ED Hoshijo shared a U.S. Department of Health and Human Services, Office of Civil Rights, Notice of Proposed Rulemaking, "Nondiscrimination in Health Programs and Activities." He requested authorization for submission of HCRC comments on the proposed rules, in support of the purpose of the proposed rules.

Commissioner Wally Fukunaga said the Commission should support the intent of broadening the scope of civil rights protections.

Chair Krieger added that it would be appropriate for the HCRC to comment on the proposed rules, because discriminatory denial of benefits is employment discrimination. She said that the HCRC comment should note that informal persuasion has not been effective in achieving voluntary change.

Commissioner Iwamoto and Chair Krieger emphasized that the nondiscrimination requirements would not be overburdensome, noting the data regarding costs cited in the DHHS notice of proposed rulemaking.

The Commission approved a motion directing the Executive Director to draft and submit HCRC comments in strong support of the proposed rules, pursuant to the DHHS notice of proposed rulemaking. (m/s/p Iwamoto/Liongson; all).

ED Hoshijo reported that he was initiating an informal discussion on the subject of discriminatory health benefits provided by State as an employer, to be followed by a formal Executive Director inquiry. He would not be reporting on the inquiry or response, because those could possibly become the basis for an Executive Director action before the Commission.

ED Hoshijo reported on ongoing work on the issue of Underutilization of Women in the Construction Trades. A sixth meeting of a working group was scheduled for October 15, 2015. .

New Business

Commissioner Fukunaga suggested that the Commission should engage in a discussion of its role, and what could be done to expand opportunity by eliminating discrimination.

Announcements

Commissioner Fukunaga announced an October 31, 2015, "Journeys to Wellness" event, sponsored by the Sunrise Ministry Foundation. Ho'oiipo DeCambra, Dr. Kalani Brady, and Frances Kakugawa would be honored, with Kakugawa presenting a keynote address, followed by wellness workshops and discussions.

Disability and Communication Access Board (DCAB) Executive Director Francine Wai shared that DCAB would be updating its rules on the use of ASL interpreters, and would like to have HCRC input and feedback on draft proposed rules.

Next Meeting

The next meeting of the Commission was scheduled, November 12, 2015, at 1:30 p.m., subject to polling of and confirmation by the Commissioners.

Adjournment